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TRAFFICSCHOOL.COM, INC. and

8 DRIVERS ED DIRECT, LLC

9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11  
12 TRAFFICSCHOOL.COM, INC., a  
13 California corporation; DRIVERS ED  
14 DIRECT, LLC, a California limited  
liability company,

15 Plaintiffs,

16 vs.

17 EDRIVER, INC., ONLINE GURU,  
18 INC., FIND MY SPECIALIST, INC.,  
and SERIOUSNET, INC., California  
19 corporations; RAVI K. LAHOTI, RAJ  
LAHOTI, individuals,

20 Defendants.

CASE NO. CV 06-7561 PA (CWx)  
*The Hon. Percy Anderson*

PLAINTIFFS' EVIDENTIARY  
OBJECTIONS TO DECLARATION  
OF RAJ LAHOTI IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
ATTORNEYS FEES AND COSTS

Date: December 5, 2011  
Time: 1:30 p.m.  
Crtrm.: 15

Complaint Filed: November 28, 2006

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25 Plaintiffs TRAFFICSCHOOL.COM, INC. and DRIVERS ED DIRECT, LLC  
26 hereby object to and move to strike the Declaration of Raj Lahoti including exhibits  
27 thereto filed by Defendants in support of their Opposition to Plaintiffs' Motion for  
28 Attorneys' Fees and Costs.

Defendants have submitted the Declaration of Defendant Raj Lahoti which purports to respond to the Declaration of Mina I. Hamilton in support of Plaintiffs' Motion. Mr. Lahoti's self-serving declaration, however, which purports to explain Defendants' ongoing deceitful practices in a misleading fashion, is largely *irrelevant* to the motion on fees. (As the Ninth Circuit stated, "To the extent we credit such a self-serving declaration...", citing SEC v. Phan, 500 F.3d 895, 909-910 (9<sup>th</sup> Cir. 2007); Opinion at 9749).

The declaration is well beyond the scope of what was raised in Ms. Hamilton's declaration (i.e., evidence to show only that Defendants' deceitful acts are a moving target requiring further fees to be incurred), and certainly beyond the scope of the issues raised in Plaintiffs' Motion for fees. The additional arguments and evidenced related to the injunction issues in remand were uninvited by the Court, and are a belated and improper attempt to argue issues relating to the Joint Status Report and the permanent injunction months after they were due, and should be stricken by the Court.

Plaintiffs expressly reserve their right to challenge, explore and conduct further investigation as to Mr. Lahoti's statements by way of written discovery and/or depositions to be conducted in the injunction remand stage of this litigation.

### **SPECIFIC OBJECTIONS**

In addition to the above general objection to the entirety of Mr. Lahoti's declaration, Plaintiffs more specifically object as follows:

#### **1. Page 2, Line 7 – Page 3, Line 20:**

"Plaintiffs have stated in their Motion at page 18-19:

Defendants have continued to defiantly repudiate this Court's permanent injunction. Since the injunction issued, Defendants have failed to comply with it, and their litigation conduct in this regard should not be ignored.

Defendants' current splash page is not a splash page, but rather a

1 “welcoming screen” that effectively disguises the disclaimer in small  
 2 font at the very top of the screen, so that many users will not see it.  
 3 Indeed, legal commentators discussing this case have noted this issue.  
 4 See, Joint Status Report, previously filed. Defendants have decided to  
 5 replace the DMV.org logo upon which the injunction was issued with a  
 6 happy-faced, flag-bearing mascot designed to appeal to and entice new  
 7 and/or younger drivers. Exh. N, ¶ 30 to Hamilton Decl. It appears that  
 8 Defendants have taken a page from the cigarette manufacturers’ play  
 9 book---one that is analogous to their “Joe Camel” mascot for Camel  
 10 cigarettes from late 1987 to 1997.

11 Moreover, Defendants’ website, including the splash page, have  
 12 consistently been moving targets – forcing Plaintiffs to constantly  
 13 monitor Defendants’ compliance with the injunction (and thus, more  
 14 fees were and will be incurred in the process). Since the injunction  
 15 issued, Defendants have repeatedly changed the DMV.org logo on the  
 16 splash screen and the look of the splash screen, including: (i) *delaying*  
 17 the disclaimer text, (ii) presenting the delayed disclaimer text in *faint*  
 18 *grey font* that blends with the toolbar browser, (iii) using font that is  
 19 *smaller* than the logo, and (iv) making changes to the logo, going from  
 20 “unofficial guide” to “dmv made simple” and now back again to  
 21 “unofficial.” See. ¶¶ 26-31, Exh. J-O to Hamilton Decl.

22 Defendants have also embarked on multiple other schemes  
 23 designed to confuse more consumers through its purported  
 24 “disclaimers”. Specifically, screen shots from the DMV.org website, in  
 25 Table 5, Hamilton Decl. Ex. O, ¶31, detail the following deceptive  
 26 practice that Plaintiffs are forced to raise: In using a disclaimer before  
 27 consumers email the site, Defendants purported to direct the consumer  
 28 to their local DMV and “*Online Services*” for that local DMV.

1           However, the consumer is actually being directed to DMV.org's  
 2           own private services. This practice has resulted in consumer deception,  
 3           which has caused a number of consumers (and likely hundreds, if not,  
 4           thousands of others as evidenced by the confused consumers on  
 5           Facebook) to pay fees to DMV.org (and its affiliates) under the  
 6           mistaken belief that these were *required fees* by their local DMV  
 7           office. [*Id.*, Ex. O].”

8  
 9           Objection: Irrelevant. Argument. Lacks foundation. Improper and  
 10          inadmissible opinion testimony. FRE 401-403, 602, 701.

11          Sustain: \_\_\_\_\_ Overrule: \_\_\_\_\_

12  
 13          2.     Page 3, Line 21 – Page 4, Line 5:

14          “I believe Plaintiffs’ Motion and Ms. Hamilton’s declaration attaching screen  
 15          shots are very misleading and inaccurate. The Plaintiffs are conveniently ignoring  
 16          the continued efforts of the Defendants to ensure no confusion results from users  
 17          visiting our site. As discussed below, Plaintiffs’ Table 5 presents the screen shots  
 18          and potential navigation path to the Defendants’ third party advertisers. However,  
 19          Plaintiffs conveniently fail to point out the number of design elements and  
 20          disclaimers that exist on each page of what they characterize as a deceptive path. If  
 21          the Court looks closely at these screen shots and reviews my commentary below it  
 22          will understand why I believe that we have gone above and beyond the Court’s  
 23          injunction and have made every effort to disclaim any affiliation with a  
 24          governmental entity. The confused citizen example provided by Plaintiffs, Tom  
 25          Pniewski, is not as depicted and I will discuss that below, as well.”

26          Objection: Irrelevant. Argument. Lacks foundation. Improper and  
 27          inadmissible opinion testimony. Mr. Lahoti’s comments regarding the “number of  
 28          design elements and disclaimers that exist on each page of what they characterize as

1 a deceptive path” are simply irrelevant because these purported “design elements  
 2 and disclaimers” have no bearing on the fact that DMV.org, in line with its admitted  
 3 “moving target” approach that Plaintiffs had to deal with for years to ensure  
 4 compliance with the injunction (in turn, resulting to *more fees* incurred), has  
 5 engaged in deceptive practices (*albeit* in new and/or re-packaged forms) by leading  
 6 unwary consumers to purported DMV online services, causing them to pay  
 7 Defendants’ affiliates what consumers believe to be DMV fees. Defendants change  
 8 certain elements of their site when Plaintiffs point them out and catch them red-  
 9 handed. For example, it was only after Plaintiffs had pointed it out that Defendants  
 10 modified the practice illustrated in Table 5 to Plaintiffs’ motion. FRE 401-403, 602,  
 11 701.

12 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

13  
 14 **3. Page 4, Lines 6-15:**

15 “I invite the Court to log on to our website as it reviews this declaration for a  
 16 true and accurate picture of all the things we are doing to comply with this Court’s  
 17 injunction, particularly since we have asked for modifications of the injunction. In  
 18 fact, I specifically ask the Court to review Plaintiffs’ Table 5 and the declaration in  
 19 support with additional scrutiny and my notes below that actually show the extent  
 20 we have gone to ensure no confusion. What Plaintiffs characterize as a ‘moving  
 21 target’ is accurate as we have continued to grow and evolve as an Internet company  
 22 should and have done so in line with the Court’s injunction. We have continued to  
 23 move towards eliminating confusion while being responsible to our visitors.”

24 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
 25 inadmissible opinion testimony. All of Mr. Lahoti’s conclusory and unsupported  
 26 statements regarding compliance with the injunction are wholly irrelevant to  
 27 Plaintiffs’ motion for fees. Mr. Lahoti’s “invitation” to this Court to “log on” to the  
 28 website is improper and misleading. Defendants’ entire website, including the

1 splash page, has consistently been a moving target. Since the injunction issued,  
 2 Defendants have repeatedly changed the DMV.org website. Defendants change  
 3 certain elements of their site when Plaintiffs point them out and catch them red-  
 4 handed. For example, it was only *after* Plaintiffs had pointed it out that Defendants  
 5 modified the practice illustrated in Table 5 to Plaintiffs' motion. Of course, then, the  
 6 Court will no longer see the practice, but it was preserved by Plaintiffs as evidence.  
 7 FRE 401-403, 602, 701.

8 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

9  
 10 **4. Page 4, Lines 16-25:**

11 "With respect to our Splash Screen (Table 5, #1), yes, it continues to evolve  
 12 over the years within the guidelines of the injunction. Various configurations of a  
 13 splash screen were tested and used to optimize clickthrough's. Disclaimer,  
 14 'unofficial language,' and design elements were used in various combinations. The  
 15 Plaintiffs have continued to harass us notwithstanding that the Court found their  
 16 Contempt Motion was without merit and that we had substantially complied with the  
 17 spirit of the Court's injunction. Contrary to Plaintiffs' selective description of our  
 18 website, we are making continued efforts in this regard and if that makes our  
 19 website a "moving target" it is because of our efforts to comply with the Court's  
 20 injunction, not to violate the injunction."

21 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
 22 inadmissible opinion testimony. All of Mr. Lahoti's conclusory and unsupported  
 23 statements regarding compliance with the injunction, and unfounded statements  
 24 regarding "harassment" are improper and wholly irrelevant to Plaintiffs' motion for  
 25 fees. FRE 401-403, 602, 701.

26 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

1           **5.     Page 4, Line 26 – Page 5, Line 8:**

2           “The Ninth Circuit’s opinion at footnote 5, p. 9750 acknowledges:  
3 ‘Defendants’ website usability expert submitted a declaration stating that splash  
4 screens typically drive away up to a quarter of potential site visitors. Plaintiffs cite  
5 nothing to rebut this evidence.’ The Splash Screen, in fact, has negatively affected  
6 public access to our First Amendment protected content and we have experienced a  
7 negative impact on our business with the current Splash Screen. In light of the  
8 changes in the design of our site, and the Ninth Circuit’s comments, we have  
9 requested modifications to the Court’s injunction in separate pleadings before this  
10 Court and request the Court carefully consider my declaration and the following  
11 comments.”

12           Objection: Irrelevant. Argument. Lacks foundation. Improper and  
13 inadmissible opinion testimony. All of Mr. Lahoti’s statements regarding requesting  
14 modifications to the Court’s injunction, conclusory and unsupported statements  
15 regarding impact of the injunction on his business, and quoted portions of the Ninth  
16 Circuit’s opinion, constitute improper argument, and are wholly irrelevant to  
17 Plaintiffs’ motion for fees. FRE 401-403, 602, 701.

18           Sustain: \_\_\_\_\_ Overrule: \_\_\_\_\_

19  
20           **6.     Page 5, Lines 9-12:**

21           “If the Court takes the time to view our website it can confirm that the  
22 comments about the Splash Screen are inaccurate. Furthermore, a secondary  
23 disclaimer at the top of the page in yellow sits on every page within the website  
24 going well beyond the injunction, which is not a specific requirement of this Court.”

25           Objection: Irrelevant. Argument. Lacks foundation. Improper and  
26 inadmissible opinion testimony. All of Mr. Lahoti’s conclusory and unsupported  
27 statements regarding going “well beyond the injunction” constitute improper  
28 argument, and are wholly irrelevant to Plaintiffs’ motion for fees. FRE 401-403,



1 602, 701.

2 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

3  
4 **7. Page 5, Lines 13-17:**

5 “I also note that our Happy Face Logo was chosen to create an obvious  
6 ‘unofficial’ look and feel to mitigate any confusion. We certainly do not dispute that  
7 we would like to attract more customers, including the younger audience, a large  
8 audience as noted by Ms. Hamilton’s statement that there are 20,000 new drivers  
9 every month. We are not in business to lose customers and I do not believe that this  
10 Court’s injunction was intended to harm our business but rather to avoid any  
11 confusion to the general public. However, what Ms. Hamilton and Plaintiffs appear  
12 to want is to drive us out of business through continued harassment and unjustified  
13 claims that we are not in compliance. The Court should review their comments with  
14 the background knowledge that Plaintiffs compete with us and would like nothing  
15 more than to put us out of business as was evident by Mr. Kramer’s statement in his  
16 email “if you can’t join ‘um, shut um down’ approach.” Again, I do not believe that  
17 this Court ruled we should shut down, only that our Website not generate confusion.  
18 We have taken additional steps to satisfy this Court’s concerns.”

19 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
20 inadmissible opinion testimony. All of Mr. Lahoti’s conjectures and conclusory and  
21 unsupported statements regarding “driving” him out of business, “harassment,” and  
22 vague and unsubstantiated statements regarding taking “additional steps” to justify  
23 the Court’s concerns— constitute improper argument, and are wholly irrelevant to  
24 Plaintiffs’ motion for fees. Mr. Lahoti’s statements also contradict the Ninth  
25 Circuit’s ruling which recognizes that: “[U]sing *litigation to shut down a*  
26 *competitor* who uses unfair trade practices is precisely what the Lanham Act seeks  
27 to encourage.” (Opinion at p. 9757)(Emphasis added). His statements also plainly  
28 ignore that the “if you can’t joint ‘um, shut ‘um down approach” that Defendants



1 incessantly keep on harping on– has already been rejected by Ninth Circuit as mere  
 2 “impure thoughts” which are simply irrelevant to issues in the case. FRE 401-403,  
 3 602, 701.

4 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

5  
 6 **8. Page 6, Lines 6-8:**

7 “We engaged a dedicated Customer Service and Community Manager on  
 8 September 26, 2011 to address Social Media and Field questions from the website.”

9 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
 10 inadmissible opinion testimony. Whether Defendants have “engaged” such a  
 11 “dedicated Customer Service and Community Manager . . . to address Social Media  
 12 and Field questions” is wholly irrelevant to Plaintiffs’ motion for fees. FRE 401-  
 13 403, 602, 701.

14 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

15  
 16 **9. Page 6, Lines 9-10:**

17 “We implemented an Auto Responder for all inbound emails with explicit  
 18 disclaimer language.”

19 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
 20 inadmissible opinion testimony. What Defendants have purportedly implemented  
 21 is wholly irrelevant to Plaintiffs’ motion for fees. FRE 401-403, 602, 701.

22 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

23  
 24 **10. Page 6, Lines 11-18:**

25 “With respect to Plaintiffs’ comments on “Table 5” of Plaintiffs’ papers, I  
 26 make the following corrections and comments.

27 14. The Splash Page (Table 5, #1).

28 a. Unofficial Language in Banner in different color along with

1 unofficial logo loads first.

2 b. Continue button and Top Disclaimer load simultaneously.

3 c. I could not recreate the alleged 2-3 second delay claimed by  
4 Ms. Hamilton.”

5 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
6 inadmissible opinion testimony. FRE 401-403, 602, 701.

7 Sustain: \_\_\_\_\_ Overrule: \_\_\_\_\_

8  
9 **11. Page 6, Line 19-Page 7, Line 7:**

10 “Landing Page (Table 5, #2).

11 a. Note Yellow Highlighted Secondary Disclaimer clearly  
12 displayed at top of screen.

13 b. Additional Disclaimer at the bottom of the screen.

14 c. ‘Unofficial DMV Guide’ appears on the Browser Header.

15 d. ‘Unofficial DMV Guide’ with Unofficial highlighted in Logo.

16 e. The use of an informal cartoon logo to create an unofficial look  
17 and feel.

18 f. ‘dmv.org’ is in all lowercase.

19 g. ‘The Unofficial DMV Guide’ (with service mark) since 1999  
20 clearly displayed.

21 h. ‘About our Company’ in the header indicates a non  
22 government site.

23 i. ‘Our Mission’ link in header that directs people to our  
24 overview page that starts with the bold text ‘We Rule, But We are NOT the  
25 Government.’”

26 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
27 inadmissible opinion testimony. Mr. Lahoti’s comments regarding the “Landing  
28 Page” are simply irrelevant because they have no bearing on the fact that DMV.org,

1 in line with its “moving target” approach that Plaintiffs had to deal with for years to  
2 ensure compliance with the injunction (in turn, resulting to *more fees* incurred), has  
3 engaged in deceptive practices (*albeit* in new and/or re-packaged forms) by leading  
4 unwary consumers to purported DMV online services, causing them to pay  
5 Defendants’ affiliates what consumers believe to be DMV fees, as shown in Table 5  
6 to Plaintiffs’ motion. FRE 401-403, 602, 701.

7 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

8  
9 **12. Page 7, Lines 8-18:**

10 “Contact DMV Support Button (Table 5, #3).

11 a. Plaintiffs conveniently dropped the ‘.org’ in the description  
12 contained in their commentary box which states ‘Contact DMV Website  
13 Support’ Button. The Website page actually says ‘Contact DMV.org Website  
14 Support.’ The ‘.org’ designation clearly distinguishes us from a governmental  
15 entity— typically designated by ‘.gov.’

16 b. Directly Below the Contact link is an Additional Disclaimer.

17 c. There is an Inc. 5000 logo on the right that is reserved for  
18 privately-owned companies, inconsistent with a government site.

19 d. ‘Our Company’ link.

20 e. ‘Careers at Online Guru’ Link.

21 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
22 inadmissible opinion testimony. Mr. Lahoti’s various comments are simply  
23 irrelevant because they have no bearing on the fact that DMV.org, in line with its  
24 “moving target” approach that Plaintiffs had to deal with for years to ensure  
25 compliance with the injunction (in turn, resulting to *more fees* incurred), has  
26 engaged in deceptive practices (*albeit* in new and/or re-packaged forms) by leading  
27 unwary consumers to purported DMV online services, causing them to pay  
28 Defendants’ affiliates what consumers believe to be DMV fees, as shown in Table 5

1 to Plaintiffs' motion. FRE 401-403, 602, 701.

2 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

3  
4 **13. Page 7, Line 19 – Page 8, Line 6:**

5 "After the Contact Button (Table 5, #4).

6 a. In bold very clearly presented right above the 'Contact your  
7 State DMV Office' link, it says 'Disclaimer: DMV.org is a privately-owned  
8 website and not owned by any government agency.'

9 b. There is nothing deceptive of letting a customer know that before they  
10 contact us they should check with their local DMV and sending them to our DMV  
11 Office Finder.

12 c. Note all additional "unofficial" design elements and disclaimers in #15.

13 d. Contact form has acknowledgment checkbox before sending anything  
14 to dmv.org's customer support that states "I acknowledge that DMV.org is a  
15 privately-owned Web site that is not owned or operated by any state government  
16 agency, including motor vehicle departments."

17 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
18 inadmissible opinion testimony. Mr. Lahoti's statement that "presented right above  
19 the 'Contact your State DMV Office' link, it says 'Disclaimer: DMV.org is a  
20 privately-owned website and not owned by any government agency'" ignores that  
21 right after this "disclaimer" is the following statement which directs the consumer to  
22 a purported link to your "local" DMV office: *For License or Registration Issues,*  
23 *please contact your state DMV office: >> <http://local.dmv.org>.* It is this link which  
24 directs consumers to various purported online DMV links, and ultimately, to  
25 DMV.org's affiliate websites which charge fees that some consumers (such as Mr.  
26 Pniewski) confuses with those charged by the DMV. The "acknowledgment  
27 checkbox" referenced by Mr. Lahoti appears to be a recently-added feature of his  
28 moving target website. FRE 401-403, 602, 701.

1 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

2  
3 **14. Page 8, Lines 7-13:**

4 “DMV Office Locations (Table 5, #5).

5 a. There is nothing deceptive about having a visitor look for their  
6 local DMV office.

7 b. Also note that the visitor has yet another opportunity to view all of the  
8 other design elements as well as a highlighted yellow disclaimer at the top of the  
9 page if they had missed it on the previous 4 pages.”

10 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
11 inadmissible opinion testimony. Mr. Lahoti’s comments regarding what he thinks is  
12 not “deceptive” and his belief as to consumers’ “another opportunity to view all of  
13 the other design elements” are unfounded and irrelevant. Mr. Pniewski (and likely a  
14 multitude of others) still got confused, as shown in Table 5 to Plaintiffs’ motion.  
15 FRE 401-403, 602, 701.

16 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

17  
18 **15. Page 8, Lines 14-21:**

19 “Purported Online DMV Services (Table 5, #6).

20 a. This assertion by Plaintiffs is simply false.

21 b. Google Maps is provided to show the visitor where to go.

22 c. Address is given below.

23 d. ‘Save Time, Skip the Line! There are many online providers that offer  
24 the following DMV Services in California.’

25 e. Note all additional disclaimers and design elements described in #15 in  
26 the event anyone missed it on the previous 5 pages.”

27 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
28 inadmissible opinion testimony. Mr. Lahoti’s conclusory and unsupported

1 comments regarding what he thinks is “simply false” and reference to “additional  
2 disclaimers ... in the event anyone missed it” are unfounded and irrelevant. Mr.  
3 Pniewski (and likely a multitude of others) still got confused, as shown in Table 5 to  
4 Plaintiffs’ motion. FRE 401-403, 602, 701.

5 Sustain: \_\_\_\_\_ Overrule: \_\_\_\_\_

6  
7 **16. Page 8, Lines 22-26:**

8 “Affiliate I Drive Safely Sponsor (Table 5, #7).

9 a. Note highlighted ‘FEATURED CALIFORNIA TRAFFIC SCHOOL  
10 SPONSORS.’

11 b. Note all of the additional disclaimers and design elements in #15 in the  
12 event anyone missed it on the previous 6 pages.”

13 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
14 inadmissible opinion testimony. Mr. Lahoti’s conclusory and unsupported  
15 comments regarding “additional disclaimers and design elements ... in the event  
16 anyone missed it” are unfounded and irrelevant. Mr. Pniewski (and likely a  
17 multitude of others) still got confused, as shown in Table 5 to Plaintiffs’ motion.  
18 FRE 401-403, 602, 701.

19 Sustain: \_\_\_\_\_ Overrule: \_\_\_\_\_

20  
21 **17. Page 8, Line 27 – Page 9, line 5:**

22 “I Drive Safely’s Website (Table 5, #8, p.1).

23 a. Links to other websites are not misleading and frequently used and  
24 provide a valuable service to users. Furthermore, if the user followed Plaintiffs’  
25 navigation path they would have been exposed to at least 6 or 7 pages all of which  
26 contained disclaimer language and unofficial design elements intentionally utilized  
27 to ensure no confusion with a governmental entity.”

28 Objection: Irrelevant. Argument. Lacks foundation. Improper and

1 inadmissible opinion testimony. Mr. Lahoti's unsupported and conclusory  
2 statements, such as that "links to other websites are not misleading and provide a  
3 valuable service to users" and that "if the user followed Plaintiffs' navigation path  
4 they would have been exposed to at least 6 or 7 pages all of which contained  
5 disclaimer language and unofficial design elements intentionally utilized to ensure  
6 no confusion with a governmental entity" are mere conjectures, unfounded and  
7 irrelevant. FRE 401-403, 602, 701.

8 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

9  
10 **18. Page 9, Lines 6-10:**

11 "Cartagz Sponsor (Table 5, #8, p.2).

12 a. Again by the time a visitor ended up on a third party advertiser's site,  
13 they would have had extensive exposure to disclaimers clearly stating that we have  
14 no affiliation with any governmental agency, including the DMV."

15 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
16 inadmissible opinion testimony. Mr. Lahoti's unsupported and conclusory  
17 statements regarding what a visitor would have been "extensively" "exposed" with  
18 are mere conjectures, unfounded and irrelevant. Mr. Pniewski (and likely a  
19 multitude of others) still got confused, as shown in Table 5 to Plaintiffs' motion.  
20 FRE 401-403, 602, 701.

21 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

22  
23 **19. Page 9, Lines 11-15, Exhibit 1:**

24 "Calculate then link to Cartagz site (Table 5, #9, p.1).

25 a. Plaintiffs fail to show the screen shot following this page as it clearly  
26 separates the DMV fees from Cartagz' fees and lets the user opt in. I have attached a  
27 copy of that following page for the Court's convenience as Exhibit 1."

28 Objection: Irrelevant. Argument. Lacks foundation. Improper and



1 inadmissible opinion testimony. Mr. Lahoti's unsupported and conclusory  
2 statements regarding what he thinks "clearly separates the DMV fees from Cartagz'  
3 fees" are mere conjectures, unfounded and irrelevant. Mr. Pniewski (and likely a  
4 multitude of others) still got confused, as shown in Table 5 to Plaintiffs' motion.  
5 FRE 401-403, 602, 701.

6 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

7  
8 **20. Page 9, Lines 16-26:**

9 "Tom Pniewski (Table 5, #9, p.2):

10 a. Confusion generated by CA DMV due to passing of new legislation. A  
11 CBS news article was written on this issue which is attached hereto as Exhibit 2.

12 b. Notice from CA DMV had explicit instructions. A copy of the  
13 notice is attached hereto as Exhibit 3.

14 c. Mr. Pniewski appears to have overreacted.

15 d. Cartagz is a separate site.

16 e. Cartagz Fees are clearly displayed before purchasing.

17 f. It is not clear whether there really was any confusion that we  
18 were the DMV."

19 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
20 inadmissible opinion testimony. Mr. Lahoti's unsupported and conclusory  
21 statements regarding the "confusion generated by CA DMV due to passing of new  
22 legislation", the "notice from the CA DMV had explicit instructions", including his  
23 beliefs that Mr. Pniewski "overreacted", that "Cartagz is a separate site", that  
24 "Cartagz fees are clearly displayed" and that "it is not clear whether there was any  
25 confusion" are mere self-serving conjectures, and are unfounded and irrelevant. The  
26 conclusions that Mr. Lahoti attempts to draw as to Exhibits 2 and 3 are also  
27 incorrect, irrelevant and lack foundation. In fact, in the "comments" portion of  
28 Exhibit 2 (page 17 of 23), the very first commenter tells the reader to "simply go to

1 the DMV.org website..." The entire article is about the official DMV and their  
2 issues and the very first comment from "Jacob" references to Defendants' website,  
3 DMV.org. See Supplemental Hamilton Decl. FRE 401-403, 602, 701, 801-802.

4 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

5  
6 **21. Page 10, Lines 1-7:**

7 "We remain open to address any further concerns of the Court, but at the end  
8 of the day there may be someone who may be confused when visiting any website.  
9 However, where reasonable steps have been taken to try to eliminate any confusion,  
10 this small percentage of confusion cannot justify closing down a business that  
11 provides a public benefit. I have looked at the rulings in this case and do not believe  
12 that this Court ordered any more than what we have been doing and in fact, we have  
13 gone beyond the order to rectify any ongoing issues."

14 Objection: Irrelevant. Argument. Lacks foundation. Improper and  
15 inadmissible opinion testimony. Mr. Lahoti's vague, unsupported and conclusory  
16 statements are merely self-serving conjectures, and are unfounded and irrelevant.  
17 FRE 401-403, 602, 701.

18 Sustain: \_\_\_\_\_

Overrule: \_\_\_\_\_

19 Plaintiffs respectfully request that the Court sustain Plaintiffs' objections and  
20 strike the Declaration of Mr. Raj Lahoti and the exhibits thereto.

21  
22 DATED: November 21, 2011

LEWIS BRISBOIS BISGAARD & SMITH LLP

23  
24  
25 By: /s/ Mina I. Hamilton

Mina I. Hamilton

Attorneys for Plaintiffs

TRAFFICSCHOOL.COM, INC. and

DRIVERS ED DIRECT, LLC